Supreme Court, U.S.
FILED

No. _____ 061292 JAN 23 2007

OFFICE OF THE CLERK

In The

Supreme Court of the United States

MORETON ROLLESTON, JR. LIVING TRUST
and MORETON ROLLESTON, JR.,

Petitioners,

v.

TYLER PERRY,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

MORETON ROLLESTON, JR.
Attorney for Petitioners
Georgia Bar No. 613700
2180 Garraux Road, N.W.
Atlanta, Georgia 30327
404/906-7098

QUESTIONS PRESENTED FOR REVIEW

1.

Judge Brasher of Fulton Superior Court had no jurisdiction over Rolleston's lawsuit pending in the Eleventh Circuit Court of Appeals. Therefore, his order that Rolleston abandon any appeal or other action in the Eleventh Circuit was void.

2.

Since the Fulton Superior Court (Judge Brasher) required Rolleston to sign papers regarding his case pending in the Eleventh Circuit Court of Appeals, before he would be released from jail, were any of such papers valid? Petitioner (hereinafter Rolleston) was 88 years old in December (and is now 89 in January 2007). On December 6, 2006, Rolleston slept in jail on a concrete floor. On December 7 Rolleston slept in jail on a wood bunk. For 48 hours Rolleston remained in his clothes until he was released on the 3rd day (December 8). Rolleston could not leave the jail until he signed all papers prepared by the Judge of Fulton Superior Court and presented to him by the jail. Signing said papers was not a free and voluntary act. Said papers are Exhibits B and C attached hereto.

3.

Rolleston did not violate any court order issued by Judge Brasher.

QUESTIONS PRESENTED FOR REVIEW – Continued

4.

Judge Brasher cited and relied on a four-year-old judgment issued by Judge Isaac Jenrette of the Fulton Superior Court. Jenrette's order provided that Rolleston, a practicing attorney, could not file a lawsuit in Fulton County, Georgia, without the permission of Judge Jenrette. Jenrette's order violated the Constitution of the United States.

LIST OF PARTIES

Moreton Rolleston, Jr. Living Trust
Moreton Rolleston, Jr.
William B. Brown

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TABLE OF AUTHORITIES

CASES

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CONSTITUTIONAL PROVISIONS

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STATUTE

28 U.S.C. § 1257 1

OPINION BELOW

On October 25, 2006, in Case No. 06-13620, the Eleventh Circuit issued its opinion and judgment, a copy of which is attached as Exhibit A and B and made a part hereof. Petitioner herein filed an appeal of said judgment. The Fulton Superior Court issued an order by Judge Brasher to dismiss said appeal of judgment of the Eleventh Circuit. Since petitioner did not dismiss the appeal, Judge Brasher of the Fulton Superior Court ordered Rolleston to be confined in Fulton County jail. Rolleston was confined in Fulton County jail on December 6 and 7 and released on December 8.

Judge Brasher also asked petitioner to sign a Waiver of Rights to Renew Appeal in the Eleventh Circuit (Exhibit D) and was also asked to sign a Dismissal of Appeal With Prejudice Nunc Pro Tunc (Exhibit E). Rolleston signed both Exhibits D and E and was released from jail.

Judge Brasher also held that Rolleston had violated a court order issued by former Judge Isaac Jenrette in Civil Action 2001 CV 40982, Fulton Superior Court. Judge Jenrette held that Rolleston could never file a case in Fulton Superior Court without permission of Judge Jenrette.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment of the U.S. Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

In the case before the Eleventh Circuit Court of Appeals, the question of jurisdiction of parties was not an issue. The Eleventh Circuit did not issue a ruling on jurisdiction of either party and neither party argued the issue. The court just assumed that both parties were citizens of Georgia.

Petitioners are prepared to prove that Respondent, Perry, did not produce a Georgia driver's license when he was asked to do so while he was a witness in another lawsuit in the Superior Court of Fulton County, Georgia. This failure to produce a Georgia driver's license occurred when Rolleston asked Perry to do so. A court reporter was present during the trial.

Respondent, Perry, is a motion picture producer. Time Magazine said that Perry had a "mansion" in Beverly Hills, California.

ARGUMENT

Hughes vs. State Board of Medical Examiners, 162 GA 246, 256 (1926). The right to follow one's profession, business or occupation is a valuable property right, protected by the Constitution and laws of the State, subject only to such restrictions as the government may expose for the welfare and safety of society.

Haneke vs. United States, 404 F. Supp. 98 (1975). The right to practice medicine like the right to practice any other profession is a valuable right which is entitled to be protected under the Constitution and laws of the State.

Woods vs. Local No. 613 of Int. Bhd. of Electrical Wkrs., 404 F. Supp. 110 at 115 (1975). This case cited *Muse vs. Connell*, 62 Ga. App. 296 at 303 (1940), which held:

The right to follow one's profession, business or occupation, or to labor, is a valuable property right, protected by the Constitution and laws of this State.

The *Muse* case cited *Hughes vs. State Board of Medical Examiners*, 162 GA 246, 247(a).

Fourth Amendment. The Fourth Amendment of the United States Constitution provides in relevant part: "No person shall be deferred of property without due process of law."

Respectfully submitted,

MORETON ROLLESTON, JR.
Attorney for Petitioners

EXHIBIT A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-13620
Non-Argument Calendar

D. C. Docket No. 06-00640-CV-GET-1

MORETON ROLLESTON, JR.,
MORETON ROLLESTON, JR. LIVING TRUST,

Plaintiffs-Appellants,

versus

TYLER PERRY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(October 25, 2006)

Before BLACK, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

Moreston Rolleston, Jr., an attorney proceeding *pro se*, and a living trust in Rolleston's name ("Rolleston") appeal the district court's dismissal of their private civil action against Tyler Perry. Rolleston claimed that he was unlawfully evicted

from his land because it was sold by Rolleston's judgment creditor to Perry when the creditor lacked good title. The district court granted Perry's motion to dismiss for lack of subject matter jurisdiction finding diversity jurisdiction lacking under 28 U.S.C. § 1332. The district court dismissed as moot Rollestons' motions to recuse and for injunctive relief. Rolleston now appeals and argue the merits of his claim.

We review the district court's determination of subject matter jurisdiction *de novo*. *Williams v. Best Buy Co.*, 269 F.3d 1316, 1318 (11th Cir. 2001). Litigants who fail to raise issues on appeal have abandoned those issues. *Allstate Ins. Co. v. Swann*, 27 F.3d 1539, 1542 (11th Cir. 1994). However, briefs should be liberally read to ascertain the issues raised. *Id.*

Diversity jurisdiction exists where the suit is between citizens of different states and the amount in controversy exceeds the statutorily prescribed amount. 28 U.S.C. § 1332(a). Here, no evidence was brought forth to dispute that both parties are citizens of Georgia. Moreover, Rolleston has not argued on appeal that subject matter jurisdiction exists, but instead argues the merits of his claim. Therefore, we affirm the district court's order.

AFFIRMED.

EXHIBIT B

United States Court of Appeals
For the Eleventh Circuit

No. 06-13620

District Court Docket No.
06-00640-CV-GET-1

MORETON ROLLESTON, JR.,
MORETON ROLLESTON JR. LIVING TRUST

Plaintiffs-Appellants,

versus

TYLER PERRY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

(Filed Oct. 25, 2006)

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: October 25, 2006
For the Court: Thomas K. Kahn, Clerk
By: Harper, Toni

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MORETON ROLLESTON, JR.; MORETON ROLLESTON, JR. LIVING TRUST, Plaintiffs, vs. TYLER PERRY, Defendant.	CIVIL ACTION FILE NO. 1:06-cv-640-GET

JUDGMENT

(Filed June 15, 2006)

This action having come before the court, Honorable G. Ernest Tidwell, United States District Judge, for consideration of defendant's motion to dismiss, and the court having GRANTED said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendant recover its costs of this action, and the action be, and the same hereby, is **dismissed**.

Dated at Atlanta, Georgia, this 15th day of June, 2006.

LUTHER D. THOMAS
CLERK OF COURT

By: /s/ Janice Micallef
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
June 15, 2006

Luther D. Thomas
Clerk of Court

By: /s/ Janice Micallef
Deputy Clerk

EXHIBIT D

IN THE SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT
STATE OF GEORGIA

ESTATE OF REBECCA WIGHT CHERRY SIMS, John Randolph Cherry, Executor, Plaintiff, v. MORETON ROLLESTON, JR., Defendant.	CIVIL ACTION FILE NO. 2001CV4092 JUDGE BRASHER

ORDER TO SHOW CAUSE TO PREVENT CITATION FOR CONTEMPT AND/OR SANCTIONS

(Filed Oct. 18, 2006)

WHEREAS the above Defendant came before the Court on October 3, 2006 to show cause why he should not be held in contempt; and

WHEREAS The Court ordered the Defendant to be held in custody until both of the following occurred:

1. Moreton Rolleston, Jr. and any relevant assigns, agents and legal representatives, together with any relevant Defendant-owned or -controlled entity files a dismissal of the appeal pending in the Eleventh Circuit; and

2. Moreton Rolleston, Jr. and any relevant assigns, agents and legal representatives, together with any relevant Defendant-owned or -controlled entity signs a quit claim deed conveying any interest in his Fulton County property to Mr. Tyler Perry, the current owner; and

WHEREAS the Defendant signed the relevant documents and purged himself of contempt in open court, and the contempt was relieved; and

WHEREAS the Plaintiff filed the dismissal of the appeal pending in the Eleventh Circuit, but the Defendant prevailed upon the Clerk of the Court for the Eleventh Circuit to return the dismissal to him unfiled;

NOW THEREFORE it is ORDERED that Moreton Rolleston, Jr. and a representative of the Moreton Rolleston, Jr. Living Trust appear before this Court on November 16, 2006 at 8:45 AM to show cause why they should not be held in contempt and why sanctions, including incarceration and expenses of litigation, should not be levied against them.

The Plaintiff is ORDERED to personally serve the Defendant with this Order to ensure proper notice in light of the possible outcome of the hearing.

This 18th day of October, 2006.

/s/ Christopher S. Brasher
The Honorable Christopher S. Brasher
Fulton County Superior Court
Atlanta Judicial Circuit

cc:
Shelby A. Outlaw, Esq.
The Outlaw Firm, PC
315 Sycamore St.
Decatur, GA 30030

Moreton Rolleston, Jr.
2180 Garraux Road
Atlanta, GA 30327

EXHIBIT E

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MORETON ROLLESTON, JR.,] MORETON ROLLESTON JR.] LIVING TRUST,] Plaintiffs-Appellants,]	]	Appeal No. 06-13620-II
v.]	]	
TYLER PERRY] Defendant-Appellee]	]	

WAIVER OF RIGHT TO RENEW APPEAL

COME NOW APPELLANTS HEREIN, MORETON ROLLESTON, JR., individually and in his capacities as Trustee and attorney for the MORETON ROLLESTON., JR. LIVING TRUST, and with full knowledge of the appellate rights granted by the constitutions of Georgia and of the United States, hereby expressly waive the legal rights of Appellants, or either of them, to renew, recommence or reinstate the above-referenced appeal which was dismissed by Appellants' execution of a Dismissal with Prejudice on October 3, 2006, and subsequently by this Court's opinion rendered on October 25, 2006 dismissing the above-referenced appeal.

To the extent that this Court's opinion rendered October 25, 2006, affirming the ruling of the U.S. District Court for the Northern District of Georgia dismissing Appellant's Complaint for lack of subject matter jurisdiction, gives rise to any right of appeal, including but not limited to the right to file a petition for Certiorari to this Court in the Supreme Court of the United States. Appellants knowingly and voluntarily waive any and all such rights.

This waiver is intended to conclusively terminate any and all claims that Appellants have asserted or could assert against Tyler Perry and the real property situated at 2035 Garraux Road and 4110 Paces Ferry Road, Atlanta, Georgia 30327.

This 7th day of December, 2006.

/s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.
Ga. Bar No. 613700
Attorney for Plaintiff
Individually and as Trustee for the
Moreton Rolleston, Jr. Living Trust.

2180 Garraux Road, N.W.
Atlanta, GA 30327
404/906-7098

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused to be served the parties in the foregoing matter with a copy of the within and foregoing document by depositing a copy of same in the U.S. First Class Mail in a properly addressed envelope with adequate postage thereon to:

William B. Brown
Heyman & Sizemore
340 Interstate North Parkway
Suite 300
Atlanta, GA 30339

This 7th day of December, 2006.

/s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.
Ga. Bar No. 613700
Attorney for Plaintiff

2180 Garraux Road, N.W.
Atlanta, GA 30327
404/906-7098

EXHIBIT F

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MORETON ROLLESTON, JR.,	]	
MORETON ROLLESTON JR.	]	
LIVING TRUST,	]	
Plaintiffs-Appellants,	]	Appeal No.
	]	06-13620-II
v.	]	
	]	
TYLER PERRY	]	
Defendant-Appellee	]	

DISMISSAL OF APPEAL WITH PREJUDICE
NUNC PRO TUNC TO OCTOBER 3, 2006

COME NOW APPELLANTS HEREIN, MORETON ROLLESTON, JR., individually and as attorney for the MORETON ROLLESTON, JR., LIVING TRUST, and hereby file this Dismissal with prejudice which was originally executed on October 3, 2006 and received in this Court on October 4, 2006 pursuant to the Order on Contempt entered by the Honorable S. Christopher Brasher following a full evidentiary hearing. Said Order on Contempt specifically directed the undersigned individually and as attorney for the Moreton Rolleston, Jr. Living Trust to dismiss the appeal at bar, holding the undersigned in contempt until such time as:

> ***Moreton Rolleston, Jr. and any relevant assigns, agents and legal representatives, together with any relevant Defendant-owned or -controlled entity files a dismissal of the appeal pending in the Eleventh Circuit.*** [Contempt Order of October 3, 2006, p. 3].

In order to purge his contempt and be released from custody of the Sheriff of Fulton County, Rolleston was required to sign and file his dismissal of this Appeal. It is a matter of record that, following the Clerk's receipt of said Dismissal on October 4, 2006, it was returned to the undersigned upon his request on October 6, 2006. Following an evidentiary hearing on contempt on December 6, 2006, the undersigned hereby reinstates and refiles the dismissal terminating this appeal and by separate document filed concurrently herewith expressly waives his right to pursue this appeal in the Eleventh Circuit Court of Appeals or the Supreme Court of the United States, under the mandate of the Bill of Peace and Perpetual Injunction entered by the Honorable Isaac Jenrette in Civil Action 2001 CV 40982, Superior Court of Fulton County.

The undersigned having executed quitclaim deeds to the property titled in the name of Tyler Perry located at 2035 Garraux Road and 4110 Paces Ferry Road and formerly owned by the undersigned, the filing of this Dismissal with Prejudice conclusively terminates any and all claims previously alleged by the undersigned against Mr. Tyler Perry, retroactively to October 3, 2006.

Executed the 7 day of December, 2006, NUNC PRO TUNC to October 3, 2006.

/s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.
Ga. Bar No. 613700
Individually and as Attorney for
Moreton Rolleston, Jr. Living Trust,
Appellants

2180 Garraux Road, N.W.
Atlanta, GA 30327
404/906-7098

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused the parties in the foregoing matter to be served with a copy of the within and foregoing document by depositing a copy of same in the U.S. First Class Mail in a properly addressed envelope with adequate postage thereon to:

William B. Brown
Heyman & Sizemore
340 Interstate North Parkway
Suite 300
Atlanta, GA 30339

This 7th day of December, 2006.

/s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.
Ga. Bar No. 613700
Individually and as Attorney
for Plaintiffs

2180 Garraux Road, N.W.
Atlanta, GA 30327
404/906-7098